IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 95 OF 2003

GIFT HOLDING PVT. LTD. ...Applicant.

V/s

YOGESH N. WADHWANA AND ANR. ...Respondents.

Mr. Nitin Pradhan i/b P.C. Mankad and Pravin Kadam for the applicant.
Mr. B. Augustine with Girish Kulkarni for respondent No.1.
Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 1st March, 2005.

P.C.:

1. Heard the learned counsel for the applicant and the learned counsel for respondent No.1.

2. Applicant is challenging the order passed by the Sessions Judge, Mumbai who allowed the Criminal Revision Application No. 445 of 2002 filed by respondent No.1 to separate the trial of respondent No.1 from B.S.I. Limited (original accused No.1) in Criminal Case No. 29/S of 1997 pending in the Court of Metropolitan Magistrate, 44th Court, Andheri, Mumbai.

3. Brief facts are that the applicant filed criminal complaint in the Court of Metropolitan Magistrate against the said B.S.I. Ltd. and accused No.2 -

Yogesh Wadhwana who was Chairman and Managing Director of accused No.1. Recording of the evidence of prosecution witnesses was completed. Thereafter, Criminal Writ Petition was filed by respondent No.1 for quashing the proceedings. However, the Writ Petition was rejected and the accused was directed to remain present for recording the statement under section 313 of the Criminal Procedure Code. On the next date i.e. on 11/5/2001 all the parties were represented by their respective advocates. However, the representative of B.S.I. - accused No.1 remained absent. Thereafter, on 1st August, 2001, advocate appearing on behalf of accused No.1 - Company withdrew his appearance on the ground that he had not received any instructions. On the next date, the learned Magistrate passed an order that the trial should be proceeded against the Company in their absence. Against the said order, Yogesh Wadhwana, respondent No.1 herein filed Criminal Revision Application in the Sessions Court. This Criminal Revision Application was allowed by the Sessions court in which direction was given to the Magistrate that if he wanted to proceed against accused No.2, he should first pass an order separating the trial against both the accused and only, thereafter, he should proceed with the separate trial against accused No.2 i.e. Yogesh N.

Wadhwana.

4. The learned Counsel appearing on behalf of the applicant submitted that the Sessions Court did not consider the provisions of section 305(4) and 317(2) of the Criminal Procedure Code. He submitted that in such a situation, it was not necessary for the Magistrate to separate the trial and that under the aforesaid provisions the Magistrate could proceed with the recording of the statement of the other accused when the representative of the Company was absent.

5. The learned Counsel appearing on behalf of respondent No.1 vehemently opposed the said submission made by the learned counsel for the applicant. He submitted that the Sessions Court was justified in passing the said order. He invited my attention to the judgment and order of the Sessions Court.

6. I am unable to accept the submissions made by the learned counsel appearing on behalf of respondent No.1. The Sessions Court has clearly erred in directing that the trial should be separated against both the accused and only thereafter the trial court should proceed with the case. In my view, in view of the provisions of Criminal Procedure Code, once the

accused-company had been served by following the procedure under the Cr.P.C. and it was represented by its authorized representative and if, thereafter, it had remained absent then the trial court to proceed against the said case as per the provisions laid down under the said Act. The trial court has power to proceed with the case if the representative of the company chose to remain absent as per the provisions of the Cr.P.C. to that effect. Even in summary case, under the provisions of section 281 which lays down the provisions regarding recording of examination of the accused it is specifically laid down that nothing mentioned in the said section would be deemed to apply to the examination of the accused persons in the course of a summary trial. The Judgement and Order of the Sessions Court is, therefore, liable to be quashed and set aside.

7. Accordingly, Criminal Revision Application No. 95 of 2003 is allowed. The Judgement and Order of the Sessions Court is quashed and set aside. The Trial Court is directed to proceed with the case and decide the same as expeditiously as possible and in accordance with law and, in any event, within a period of four months.

V.M. KANADE, J.